IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2414 OF 1994

1. Shri Vithal Dinkar Prasade and ors Petitioners.
Vs
1. Shri Ravindra Yashwat Prasade and ors Respondents.

Mr U.B.Nighot, for the petitioners.
Mrs S.S.Bhende, AGP, for respondent nos 3 to 5.
Respondent no.2 served, (Absent)

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.
DATE : March 07, 2006.
P.C.

1. This writ petition under Articles 226 and 227 of the Constitution of India is directed against the order dated 31.1.1994 passed by the respondent-State entertaining the revision filed by respondent no.1 and granting an interim stay to the order dated 16.1.1986 passed by the DDLR, Pune in Consolidation Appeal No.51, Pune.

2. The instant writ petition arises out of the action of the authorities under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act,1947 (for short "the Act"). The petitioners claim that there was a partition in which the lands in dispute were allotted to their shares. In 1977-78, a consolidation scheme was made applicable to the village Javulake, in which, according to the petitioners, the lands allotted to their shares were wrongly entered in the

name of respondent nos 1 & 2's father. Petitioner no.1, therefore, had preferred Appeal No.310 of 1984 before the Consolidation Officer. The appeal was allowed and the mutation entry no.2043, whereby the names of respondent nos 1 and 2 were entered into the records of rights, was cancelled vide order dated 31.12.1984. That order was carried by respondent nos 1 and 2 in appeal before the DDLR, Pune, being Consolidation Appal No.51, Pune. The appeal was, however, dismissed on 16.1.1986. The matter was further carried in revision by respondent no.1. However, the revision was also dismissed by the State - respondent no.3 vide order dated 13.9.1990. The petitioners' claim that in pursuance of these orders, possession of the lands was restored to the petitioners on 25.7.1991. In 1993, petitioner no.1 sold survey no.31/2,i.e. Gat No.38, to petitioner no.2. It appears that respondent no.1 thereafter, on 29.6.1993, filed a suit against the petitioners for injunction. However, temporary injunction was refused. The learned counsel for the petitioners was not in a position to state whether or not the said suit is still pending. Thereafter, respondent no.1 filed revision application before the State Government challenging the order dated 16.1.1986 passed by the DDLR, Pune and in that revision application the order dated 31.1.1994, impugned in the present writ petition granting the interim stay, was passed. The

petitioner, therefore, filed an application seeking revision before the State of the order dated 31.1.1994. But no order was passed on that application. It is against this backdrop, the petitioners have approached this Court contending that the order dated 16.1.1986 has already been executed and the petitioners are in possession of the lands in dispute since July, 1991 and in view thereof the order granting the interim stay deserves to be quashed and set aside and in any case cannot operate against the petitioners. It was further contended that the second revision application on which the impugned order has been passed, is not maintainable Lastly, it was submitted that even if it is assumed that it was not a revision but a review application it is hopelessly barred by limitation and, therefore,deserves to be dismissed outright.

3. Unfortunately, none appeared for respondent no.1. It is not clear whether respondent no.1 has been served in the instant petition. This Court, while issuing rule in the writ petition, granted ad-interim relief in terms of prayer clause (d), by which the operation and execution of the order dated 31.1.1994 passed by respondent no.3-State came to be stayed. The stay is operating against the respondents since 1994. Keeping that in view and considering the submissions of the learned counsel for the petitioners, in our opinion, ends of justice would be met

if the interim order granted by this Court in August,1994 is kept operative with directions to respondent no.3-State to dispose of the revision application allowing the petitioners to raise all contentions before the respondent-State. We, therefore, pass the following order.

(i) The interim order passed by this Court in terms of prayer clause (d) on 16.8.1994 shall remain operative until the disposal of Revision No.S-30/3492/P.K.7805/L-1 filed by respondent no.1 and for a period of 15 days thereafter if the orders in the revision are adverse to the petitioners.

(ii) Respondent no.3-State shall decide the revision application as expeditiously as possible, preferably within a period of three months from the date of receipt of this order.

(iii) All contentions, including the contention of the petitioners that the second revision application is not tenable, are kept open.

4. Rule is made absolute in aforesaid terms. The writ petition stands disposed of. No order as to costs.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE,J.)**